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May 30, 2008

Susan Fregien  
 California Regional Water Quality Control Board  
 Central Valley Region  
 Fresno, CA 93706  
 Sent Electronically

**Re: Comment Letter – March 19, 2008 Scoping Document for the Long-term Irrigated Lands Regulatory Program**

Dear Ms. Fregien:

Thank you for the opportunity to provide public comments on the Central Valley's Scoping Document for the Long-term Irrigated Lands Regulatory Program. Our organizations are united in our commitment to ensuring that all Californians have access to safe and affordable drinking water. Our work has in particular focused on addressing the drinking water needs of rural communities in the Central Valley.

We have reviewed your Scoping Document for the Long-term Irrigated Lands Regulatory Program, and ask that the following suggestions be incorporated into the environmental review.

### **Scope**

We strongly endorse the proposal to expand the scope of the program to include groundwater and groundwater dischargers. The Porter Cologne Act requires the State and Regional Boards to protect groundwater as well as surface water quality for beneficial uses. As you are aware,

nitrate contamination of drinking water supplies is a critical problem throughout the San Joaquin Valley. Nitrate is an acute contaminant, meaning that it can cause death in infants in a matter of days of high exposure. Studies indicate that **fertilizer from irrigated agriculture is a primary source of nitrate contamination of drinking water wells.**<sup>1</sup> Additionally, pesticides, salts, and other on-site contaminants are discharged into our groundwater aquifers and have been found in hundreds of drinking water wells due to irrigated agriculture.<sup>2</sup> As a result, groundwater in the region is no longer suitable for many beneficial uses. Public drinking water systems are faced with millions of dollars in costs and private well owners must invest in expensive treatment options or find new sources. Our State's poorest families, those least able to buy alternative water sources, are given contaminated water in their homes.<sup>3</sup>

The proposal to change the scope of the program with regards to wetlands, nurseries, non-irrigated pasture and dryland farming should be evaluated as part of the program alternatives so that the public can evaluate the potential environmental impacts of including or not including such practices within this or a separate regulatory framework.

### **Program Description**

The current program description lacks the specificity needed to fully and accurately assess its impacts and impose appropriate mitigation. Areas that require greater definition include:

- How and whether site selection for monitoring programs will prioritize "hot spots";

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<sup>1</sup> Lawrence Livermore National Laboratory. (2005) *California GAMA Program: Sources and transport of nitrate in shallow groundwater in the Llagas Basin of Santa Clara County, California*. UCRL-TR-213705. pp.3, 22, 24; Burow et al. (2006) *Temporal trends in concentrations of DBCP and nitrate in groundwater in the eastern San Joaquin Valley, California*, USA Hydrogeology Journal. DOI 10.1007/s10040-006-0148-7; Lawrence Livermore National Laboratory (2005) *Sources and transport of nitrate in groundwater in the Livermore Valley Basin, California*. p. 22.; Burow et al., *Occurrence of nitrate and pesticides in ground water beneath three agricultural land-use settings in the Eastern San Joaquin Valley, California, 1993–1995* U.S. GEOLOGICAL SURVEY Water-Resources Investigations Report 97-4284, available at <http://ca.water.usgs.gov/sanj/pub/usgs/wrir97-4284/wrir97-4284.pdf>.

<sup>2</sup> Spurlock, F. 2000. *Effect of irrigation scheduling on movement of pesticides to ground water in coarse soils*, available at <http://www.cdpr.ca.gov/docs/emppm/pubs/ehapreps/eh0001.pdf>; Zalkin, F., M. Wilkerson, and R.J. Oshima. 1984. *Pesticide movement to ground water volume II: Pesticide contamination in the soil profile at DBCP, EDB, simazine, and carbofuran application sites*, available at <http://www.cdpr.ca.gov/docs/emppm/pubs/ehapreps/eh8403.pdf>; Barbash et al. (1999) *Distribution of Major Herbicides in Ground Water of the United States* U.S. GEOLOGICAL SURVEY Water-Resources Investigations Report 98-4245; Burow et al. *Evaluation of Processes Affecting 1,2-Dibromo-3-Chloropropane (DBCP) Concentrations in Ground Water in the Eastern San Joaquin Valley, California: Analysis of Chemical Data and Ground- Water Flow and Transport Simulations Prepared in cooperation with the UNIVERSITY OF CALIFORNIA, DAVIS*, U.S. Geological Survey Water-Resources Investigations Report 99-4059, available at <http://ca.water.usgs.gov/sanj/pub/usgs/wrir99-4059/wrir99-4059.pdf>; The Quality of Our Nation's Waters Nutrients and Pesticides, U.S. Geological Survey Circular 1225; Schoups et al. (2005) *Sustainability of irrigated agriculture in the San Joaquin Valley, California*. available at <http://www.swrcb.ca.gov/rwqcb5/cv-salts/committees/sec/sec-29jun07-shoups-et-al.pdf>.

<sup>3</sup> We have testified before the Regional Board many times over the past two years on the urgency of the drinking water problem due to groundwater contamination, particularly from nitrate. Over 20 percent of all community systems in Tulare County cannot meet basic safe drinking water laws, almost entirely due to nitrate contamination of groundwater sources, and over 40% of private wells tested by the State Board's GAMA program had nitrate over the Maximum Contaminant Level (MCL). Tulare County has the highest poverty rates in the State and the most number of systems that cannot meet MCLs.

- A prioritization of monitoring sites according to their impact on identified beneficial uses of the water.
- A description of Best Practices that would be implemented at each stage of the program;
- The actions that must be taken to gain an exemption from development of a Management Plan;
- Inclusion in monitoring program of contaminants of concern that are not yet regulated by the Board, but which have been targeted by other state agencies for their negative impact on public health or the environment;
- Minimum standards, schedules and performance measures for Management Plans;
- A description of the criteria used to prioritize water quality problems where multiple exceedances are detected; we would expect these criteria to rank the protection of public health and safety as the highest priority.
- A description of additional actions that the Executive Officer may require as part of the program.
- A description of the mechanisms to be employed by the Board to ensure compliance with existing plans and policies.

It is critical that the long term Irrigated Lands Regulatory Program include effective mechanisms to monitor program effectiveness and promote best management practices. For groundwater, this means including A Groundwater Monitoring and Reporting Program with a timeline for implementation by all groundwater dischargers.

1. The program should include shallow groundwater monitoring for groundwater contaminants found on-site to determine whether they occur in excess of water quality objectives.
2. The timeline for implementation should prioritize groundwater dischargers in vulnerable geologic environments where water quality objectives are not being met.

The long term Irrigated Lands Regulatory Program must include a timeline for development of Best Management Practices (BMPs) and implementation requirements for all surface *and* groundwater dischargers.<sup>4</sup> Requirements must include:

1. A means of verification that BMPs are being implemented;
2. A means of quantifying BMP effectiveness;
3. A means of incorporating feedback from monitoring results into BMP requirements.
4. Milestones for the Program to meet surface *and* groundwater water quality objectives.

## **Alternatives**

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<sup>4</sup> Many of the BMPs identified by DPR for legal pesticide use may be applicable to this program. See <http://www.cdpr.ca.gov/docs/gwp/chem.htm>; Groundwater Mitigation Measures (3CCR sections 6487.1 - 6487.5); general restricted material permit regulations (3CCR sections 6400 - 6444); bentazon (3CCR section 6457); and aldicarb (3CCR section 6458) - <http://www.cdpr.ca.gov/docs/inhouse/calcode/3ccrcovr.htm>. However, it is important to note that DPR does not seem to have data at this time to evaluate the effectiveness of application of these BMPs in preventing groundwater degradation.

A number of regulatory alternatives to the current program should be considered and analyzed including following:

- General WDRs for types of dischargers that require similar BMP or have similar discharges (similar commodities, irrigation practices, hydrologic and soil conditions, chemical use (i.e. organic/pesticide free, low fertilizer use), climate, etc.).
- Individual WDRs for dischargers that are in highly vulnerable hydrologic environments or have intensive chemical application or otherwise are at a higher risk of contaminating surface or groundwater.
- General WDRs for dischargers based on sub-watersheds or other small, hydraulically similar areas.
- Fee structures should be evaluated that levy higher fees on highly toxic or intensive chemical use and lesser fees on pesticide free/organic or low chemical and fertilizer use. Additionally, an alternative fee structure should be considered that levies a fee based on nutrient management budgets (i.e. nitrogen applied above rates of uptake), a percentage of which would go to a fund to cover mitigation actions necessary for beneficial uses due to cumulative effects of on-going discharges; additionally, a fee structure should consider higher fees for lower irrigation efficiencies since irrigation efficiencies are linked to discharges into groundwater.

The preferred alternative should **not** allow continued impairment of waters based on the specious reasoning that beneficial uses have not yet been impaired.

The preferred alternative should;

- Incorporate groundwater into all phases of the program
- Require implementation of best management practices for all dischargers proactively (without having to wait for problems to be identified first in a monitoring program),
- Institute a monitoring program to evaluate the effectiveness of best management practice requirements.
- Institute limits on the use of contaminants currently shown to impair the beneficial uses of waters in the hydrological area;
- Require development of a Management Plan where data indicates a trend of increasing contamination or highly vulnerable hydraulic environments, regardless of whether the contamination is in violation of water quality objectives;
- Include a mechanism to identify responsible parties and hold them responsible for cleanup.

Given the widespread contamination of ground and surface water supplies throughout the Central Valley it is clear that a waiver program is not effectively protecting water quality. Therefore, waivers should not be part of the long term Irrigated Lands Regulatory Program. History has demonstrated that this regulatory framework is not capable of holding polluters accountable and of ensuring that they manage their wastewater responsibly. Therefore, the environmentally superior alternative must include proactive strategies and programs to halt the continued impairment of waters, as well as regulatory requirements to hold responsible parties liable for cleanup of impaired waters.

## **Impacts**

The current program description includes neither best practices to limit continued impairment of surface and groundwater in the region, nor mechanisms requiring restoration of impaired waters. This document must therefore assume that the current trend of increasing impairment of Central Valley waters by nutrients, fertilizers, salts, and pesticides will continue, and must therefore assess the impacts of those trends on waters that currently exceed water quality objectives and which will become even more polluted, and on those that have the potential to become impaired. This document must include a full anti-degradation analysis, including the cost of continued degradation to beneficial uses. The "Baseline" for determining "high quality waters," including groundwater, for anti-degradation analysis purposes should be 1968 unless otherwise codified in the Basin Plan.

Given the degree to which local drinking water supplies have been compromised by agricultural practices that will be allowed to continue under this program, the document must provide a full assessment of the public health impact of those continued practices. This should include an evaluation of communities whose water treatment costs due to contamination cause their rates to exceed the national standard of 1.5% of Median Household Income.

The continuing impairment of groundwater supplies in the Central Valley has and will continue to limit the ability to use these supplies for potable drinking water. This document should identify alternative potable sources for communities whose supplies have been and will be rendered unusable by the continued agricultural practices.

### **Mitigation Measures**

In the event that an alternative program will continue to allow some groundwater degradation to occur, or is found to have a significant cumulative impact, the following mitigation measures should be considered:

- Assessment of a fee for significant but unavoidable cumulative impacts to groundwater quality, to be used to mitigate those impacts (ex. nitrate impact fee used to pay for treatment technology required by beneficial uses such as drinking water).
- Clean-up programs for contaminated groundwater aquifers. The document should evaluate all feasible clean-up and abatement measures for contaminated groundwater aquifers.

### **Conclusion**

Irrigation water run-off from fields contains a toxic mix of fertilizers and pesticides, which ultimately flow into our waterways and seep into our aquifers. As a result, our local drinking water sources are the worst polluted in the State.<sup>5</sup> More than 40,000 people in Central Valley communities each year are exposed to unsafe and illegal levels of contaminants in their drinking water due to groundwater contamination.<sup>6</sup>

Currently the Central Valley Regional Water Board continues to allow water with highly concentrated levels of fertilizers and pesticides to contaminate community drinking water sources without ANY regulatory requirements.

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<sup>5</sup> See Department of Health Services Annual Violations Report (2004 & 2005).

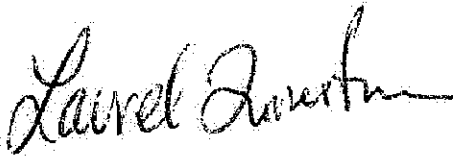
<sup>6</sup> Id.

While irrigators are allowed to pollute, small, rural communities have to pay for bottled water and the cost for drilling new wells or treatment technology. Because these sources of contaminants have remained unregulated, residents in the Central Valley have to pay some of the highest proportional water rates in the state for undrinkable water. Lack of groundwater protections has gone on too long at the expense of community health. As you work towards the development of a long term Irrigated Lands Regulatory Program we urge you to assess the public health costs and the clean up costs for local water providers. We also urge you to adopt systems that allow the Regional Board to effectively monitor program effectiveness and promote best management practices.

Additional communications for this process should be sent to Laurel Firestone, Community Water Center, 313 N. West St., Visalia, CA 93291, [laurel.firestone@communitywatercenter.org](mailto:laurel.firestone@communitywatercenter.org); and Jennifer Clary, Clean Water Action, 111 New Montgomery St., Ste. 600, San Francisco, CA 94105, [jclary@cleanwater.org](mailto:jclary@cleanwater.org). Electronic communication is preferred.

Thank you for considering our comments.

Sincerely,



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